

THE HON'BLE MR. JUSTICE V.V.S. RAO

THURSDAY, THE 24TH DAY OF NOVEMBER, 2005

W.P.No. 3043 of 2000

Between:-

A.P. State Road Transport Corporation, Mushirabad, Hyderabad, rep., by its
Managing Director and another.

--Petitioners

And

State Transport Appellate Tribunal, A.P., Hyderabad, rep., by its Presiding Officer
and two others.

--Respondents

Order:- (W.P.No. 3043 of 2000)

The Andhra Pradesh State Road Transport Corporation, Mushirabad, Hyderabad, represented by its Managing Director and its Regional Manager, Srikakulam, Srikakulam district are the petitioners. They assail the order dated 06-12-1999 passed by the State Transport Appellate Tribunal, Hyderabad, the 1st respondent herein, in A.P.No. 537 of 1998 whereby and whereunder the 1st respondent directed the 2nd respondent – The Regional Transport Authority, Srikakulam, to issue a permit to the 3rd respondent to run a pucca stage carriage motor vehicle permit on the route Sompeta to J. Sasanam.

The fact of the matter is not much in dispute. The 3rd respondent's application seeking pucca stage carriage permit on the mofussil route Sompeta to J. Sasanam was rejected by the 2nd respondent, by the proceedings dated 24-10-1998, on the ground that the route applied for is being served by the A.P.S.R.T.C.; and a further permit would result in congestive competition. On an appeal by the 3rd respondent, the 1st respondent relying on the decision of the Supreme Court in **MITHILESH GARG Vs. UNION OF INDIA** (¹), allowed the appeal. The submission of the petitioners herein that without there being any notice, no permit can be granted to a private operator, was rejected on the ground that even notice at the stage of appeal before the 1st respondent would be sufficient compliance with the principles of natural justice.

In challenging the impugned order, learned standing counsel for the APSRTC relies on three grounds viz., Firstly, he contends that the orders passed by the Regional Transport Authority, which merged in the State Transport Appellate Tribunal was passed without any notice to the A.P.S.R.T.C. as required under law and, therefore the permit is unsustainable. Reliance is placed on the decision of a learned single Judge of this Court in **A.P.S.R.T.C. Vs. SECRETARY TO GOVT., TRANSPORT DEPT.**, (²); Secondly, It is urged that the route from Sompeta to J. Sasanam is not one of the notified routes as per Section 68 (3)(ca) of the Motor Vehicles Act, 1988 (Act 59 of 1988) (hereinafter called 'the Act') and, therefore, the grant of permit under

the provisions of the Act is impermissible and Thirdly, it is submitted by the learned counsel that the grant of permit would violate the notified scheme in G.O.Ms.No. 1160 Transport, Roads & Buildings (Tr.-V) dated 09-11-1987; G.O.Ms.No. 1171 Transport, Roads & Buildings (Tr.-V) dated 09-11-1987; G.O.Ms.No. 1162 Transport, Roads & Buildings (Tr.-V) dated 09-11-1987 and two notified routes cannot be clubbed for the purpose of granting stage carriage permit.

Learned counsel for the 3rd respondent relies on Rule 138 of the Andhra Pradesh Motor Vehicles Rules, 1989 (hereinafter called 'the Rules'). In support of the submission that the Regional Transport Authority passed order in circulation and therefore is permissible under law. He also submits that clubbing of the two notified routes is not prohibited in law and, therefore, grant of permission to the 3rd respondent cannot be termed as 'invalid'.

In ***A.P.S.R.T.C. Vs. Secretary to Government*** (1 supra), this Court considered the question whether in the proceedings before the Regional Transport Authority, A.P.S.R.T.C. is a necessary party and whether a notice ought to be issued invariably by the Regional Transport Authority while considering an application of private operator for grant of town service/mofussil service permit. After an elaborate analysis of the provisions of the Act in Chapter-VI, this Court laid down as under.

Subject to the above and in the result, it is declared that (i) every RTA and/or the STAT is obligated to hear the APSRTC whenever considering any application for grant of regular permit or a temporary permit under Sections 80 or 87 of the Act; (ii) any permit granted without an opportunity afforded to the APSRTC to submit its views or objections including with reference to approved schemes, would render any consequent grant of a permit regular or temporary, a nullity.

The submission of the learned counsel for contesting respondent is misconceived. Rule 138 of the Rules reads:

"138. Circulation of papers:-- (1) Orders may be taken by circulating papers to the members of the Regional Transport Authority unless any person has a right to be heard in accordance with the provisions of the Act and of these rules, or unless, in the opinion of the Chairman, any person has a reasonable claim to be heard in the matter. Where a case is so circulated it shall be open to any member to require that the matter shall be discussed at a meeting of the Regional Transport Authority.

(2) Nothing in sub-rule (1) shall prevent Regional Transport Authority from deciding by the procedure of circulation any matter which has been considered at a meeting or has been subject of a hearing and upon which a decision has been reserved."

A plain reading of the above Rule would show that though it is permissible for the Regional Transport Authority to make orders by circulating papers to the members, such a procedure cannot be adopted without there being a requirement of hearing a

person, who has a reasonable claim in the matter of grant of permit. Admittedly, the area covered by three notified schemes and unless and until A.P.S.R.T.C. is given a notice, it would not be possible for the 2nd respondent to consider the application of the 3rd respondent properly. In this case, the decision was taken by the Regional Transport Authority initially without any notice to the A.P.S.R.T.C. Though the decision went in favour of the A.P.S.R.T.C, the reasons for rejecting the 3rd respondent's application was too simplistic and did not consider other aspects of the matter. Before the State Transport Appellate Tribunal, the decision of this court in ***A.P.S.R.T.C. Vs. Secretary to Government*** (1 supra) was cited, but the 1st respondent rejected the contention holding that notice at the stage of appeal before the State Transport Appellate Tribunal would cure the defect. This is certainly a grave error apparent on the face of the record in not following the binding precedent of this court.

In the result, for the above reasons, this writ petition is allowed and the matter is remitted to the Regional Transport Authority with a direction to issue notice to the A.P.S.R.T.C. and also afford an opportunity of hearing and decide the application of the 3rd respondent. If the 3rd respondent is granted pucca stage carriage permit on the route Sompeta to J. Sasanam pursuant to the impugned order of the 1st respondent, there shall be *status quo* as on today, subject to the 3rd respondent paying the motor vehicles tax and complying all other conditions of permit. The 2nd respondent is directed to dispose of the application of the 3rd respondent within a period of eight (8) weeks or in the next meeting whichever is earlier, from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. No costs.

V.V.S. RAO, J

Dated: 24-11-2005

Pvks/*

Nb:- Furnish c.c. in one week.

B/o

Pvks/*

